

## THE FOSTER TRIAL.

THE CASE FOR THE PROSECUTION OPENED AND CLOSED—THE TESTIMONY OF MRS. PUTNAM, MRS. DUVAL, MABEL VIRGINIA DUVAL, ANNA LILLIE DUVAL, PATRICK CUNNINGHAM, FREDERICK E. GOLDTHWAITE, PETER SHUMWAY, OFFICER DAVIS, THOMAS DOODY, CAPT. KILLELEA, DR. GEORGE M. LEFFERTS, AND AUSTIN G. PUTNAM—THE DEFENSE TO BE PUT IN TO-DAY.

The Court was opened yesterday at 10:30 precisely, with Judge Cardozo on the bench, District-Attorney Garvin, and Col. Fellows, his Assistant, representing the people, and Judge Stuart, and his associate, the respondent.

At 10:45 James Daniel, a butcher of No. 492 Pearl-st., was called, and on Judge Stuart's challenge for principal cause, said that he had formed no opinion as to the guilt or innocence of Foster, and that he had no conscientious scruples against finding a verdict of guilty in a case where the punishment was death. On the challenge for favor, he said he did not believe anything he read, but afterward qualified the statement by saying that he didn't believe more than half.

Q. You have any impression as to the guilt or innocence of the prisoner?

A. No, Sir.

Q. *For what you have read, assuming it to be true, (did you derive any impression as to the guilt or innocence of the prisoner?)* A. Well, I have a doubt about it.

Q. *It is thus doubtful as to the guilt or innocence of the prisoner?* A. Truly so.

Q. *Would you consider it a crime on the part of Foster to have beaten Mr. Putnam with a cut-book in the manner the papers said?* A. I should think it was.

Q. *Assuming that Foster hit Mr. Putnam with the cut-book on the head, and that he was killed, and assuming that Foster intended only to strike him, and not to kill him, and that by the violence of the blow he died, have you any impression as to whether that resulting in the death of the man, is a crime?* A. The first step or manslaughter in the same degree I suppose not understood.

Q. *(By Judge Carlson.) Have you any impression as to most the law upon the facts as Judge Stuart states them?* A. I think it is entirely correct.

The challenges were then withdrawn, and Mr. Daniel

Having proved satisfactory in all his other answers, was sworn as the twelfth juror.

The following is the full list of the jury:

Benjamin Hendrickson, Bureau Assessor, No. 392 West Eleventh-st.

John A. McMor, merchant, No. 49 Fulton-st.

John E. Hoagland, merchant, No. 330 West-st., residence No. 19 Colfax place.

James H. Hubler, Gold Exchange Bank, No. 88 Broadway, residence No. 2 West Thirty-ninth-st.

Samuel Dowdway, fur, No. 52 Canal-st.

John H. Knickerbocker, cornered at No. 26 Broadway.

Residence, No. 218 West Fifty-third-st.

Simon Klaser, marble, No. 301 West Twenty-sixth-st.

John C. Lee, fur, No. 49 Canal-st.

Henry Leo, fur, No. 493 Canal-st.

Thomas J. Hedges, No. 63 West-st.

George K. Chase, No. 349 West Nuestate-st.

James Daniel, butcher, No. 472 Pearl-st.

Cardozo then asked the jury if they were ready on both sides, and received an affirmative reply.

Judge Cardozo—There is nothing further in regard to this case.

Judge Stuart—Nothing from us. We are content with this panel, and we will be ready with our defense to-morrow.

A brief delay ensued while the jurymen, who were not impeached, were leaving the room, and, when quiet was restored, Judge Cardozo proceeded to read the opening address for the prosecution, as follows:

OPENING REMARKS OF DISTRICT ATTORNEY CARVON.

If the Court please, Gentlemen of the Jury: It gives me great pleasure to be able to rise here this morning and see these 12 seats filled; to see that we have before us in the jury-box 12 intelligent, sensible men who are to listen to and hear the evidence in this case. Some of you may have sat in capital cases before, and most of you probably never have. I thank you, however, for the responsibility which—I thank my God, every day since I have held the position of a prosecutor—does not rest upon me. It is a responsibility for the life of a human being; and, in addition,

This is an indictment for murder in the first degree, which charges that a little past 8 o'clock on the 20th of April, 1871, without provocation, with malice aforethought, by design, took the life of Avery D. Putnam, with an instrument with which he was armed, a man of the name of George W. Smith, before a public street.

in a public conveyance, where everybody has a right, in the darkness of the night, and in the presence of three women unprotected, except by a protector. The Court will tell you that murder consists in taking the life of a human being with the design so to do, without cause, without justification, without provocation, and with the intent of murder in the first degree, and his punishment is fixed by statute. I shall show you that a Mrs. Duval, living on Broadway, had two young daughters, one of whom was married in April, 1871, singing in the choir. As the hour approached for her to return home, knowing her husband's character, she was very much alarmed. She started with characters of her own daughter to go after that child and as-

[illegible][illegible]

detectors are lit up and down by the driver, passed round the west side of the car, came back to the east side, struck him two blows on the side of the head, crushing in his skull through a felt hat; left him, and went back the same way he came, threw the hook on the platform, and disappeared in the depot within a very few minutes. That is a very succinct, concise statement of what will appear to you, as I am instructed, on the evidence. It will further appear that this prisoner had been seen after a car and knew about the car-hook.

He will further appeal to you that, after leaving Mr. Putnam and these two ladies, he went forward and spoke to the driver, and said to him: "Have you got a car-hook?" That was before using it; knowing it was there in the way, without any provocation; plenty of time to think it over, very ally passing round on the opposite side of the car, he strikes the fatal blow which sends Mr. Putnam to the grave. Now, if I know you these facts by credible witnesses, I deliver the verdict that they are true, I shall ask you in the first degree, and that he

man is guilty of a crime, he must take the consequences of his own act; for if crimes of this description are not to be punished, where is the salvation and order of this community to come from? We do not ask the life of a human being for the purpose of human vengeance, but we ask it for the purpose of preventing others committing the same crime, and for no other reason. The object of punishment is the prevention of crime in others; that those who hear it may know that crimes of this description are punished in this community, and that, therefore, they must stay away from them.

With this statement, and giving this man the benefit of every possible chance he may have for his life, and when through we shall ask you to render such a verdict as the facts in the case shall justify. A great deal has been said, some by counsel and some from other sources, in regard to this man's going speedily to trial. I ask you, did he give Mr. Putnam notice that he was to die—did he give that poor man notice that his day and his hour had come, and he was to cease to exist? Or was that blow

**TESTIMONY OF MRS. ELLEN PUTNAM.**  
At the conclusion of the District Attorney's address the first witness, Mrs. Ellen Putnam, the widow of the deceased, was called. She was dressed in deep mourning; and after taking her seat in the witness chair was

to overcome with emotion as to be unable to speak. Judge Stuart noticing this said, with considerable feeling, "We have no desire, very far from it, that this lady should be presented upon the stand. We admit Mr. Patnam's death; we admit he came to his death by the hand of the prisoner at the bar. That fact could be proved, if necessary, by a hundred people beside this excellent, weeping widow; and we don't desire for her, for our own, for humanity, for propriety's sake, that she should be put upon the stand. We admit everything she has uttered; we admit the facts of this case, and

District-Attorney Garvin—I only want to ask you one,

100